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# The Re-emergence of the Legal Profession in the People's Republic of China

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# THE RE-EMERGENCE OF THE LEGAL PROFESSION IN THE PEOPLE'S REPUBLIC OF CHINA

FRANKIE FOOK-LUN LEUNG\*

## INTRODUCTION

### A. Pre-1949

Historically, lawyers have never taken shape as a professional class in Chinese society. In the Ch'ing Dynasty (1644-1911), for instance:

The emergence of a legal profession to serve the interest of litigants, either for pleading or offering opinions on points of law, was officially discouraged by articles in the *Ta Ch'ing Lu Li* which penalized those who incited others to undertake litigation or made a profit out of managing a lawsuit. This restriction of professional activity to official advisors or clandestine lawyers was clearly a barrier to the technical development of law in China.<sup>1</sup>

In the past, the closest equivalent to the Western notion of a private legal practitioner was a "litigation trickster" or "litigation stirrer."<sup>2</sup> Even in the law books published today in the People's Republic of China (PRC), lawyers in traditional, feudal China are referred to as "devious gods"—"devious" in the sense that they distort facts and manipulate words to exculpate criminal types and advance the interests of rich litigants; "gods" in the sense that they conspire with corrupt judicial officials to achieve their goals and are powerful in their influence and use of the language.<sup>3</sup> Between the demise of the Ch'ing Dynasty in

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1. S. VAN DER SPENKEL, *LEGAL INSTITUTIONS IN MANCHURIA* 69 (1977).

2. V.H. LI, *LAW WITHOUT LAWYERS: A COMPARATIVE VIEW OF LAW IN CHINA AND THE UNITED STATES* 19 (1978); Cohen, *Introduction*, to *ESSAYS ON CHINA'S LEGAL TRADITION* 6 (J. Cohen, R. Edwards & F. C. Chen eds. 1980); Alford, *Of Arsenic and Old Laws: Looking Anew at Criminal Justice in Late Imperial China*, 72 CAL. L. REV. 1180, 1194 nn.76 & 1202 (1984).

3. S.Y. JIE & F.C. JIN, *LU SHI BEN ZHI SHI* [BASIC KNOWLEDGE OF LAWYERS] 5-7 (1980).

1911 and what has been called the "liberation" of China in 1949, China had to contend with a "succession of foreign wars and civil strifes."<sup>4</sup> The Republican government (1912-1949) did little to promote the development of lawyers as a profession.<sup>5</sup> A strong legal profession, therefore, never emerged during that period, except perhaps in a few coastal cities like Shanghai, where there were numerous lawyers in practice.

### B. Post-1949

It has been observed that even before 1949, the year when the PRC was established, Chinese Communists were hostile and suspicious of bourgeois lawyers.<sup>6</sup> In 1949, all the laws, decrees and judicial systems of the Kuomintang Reactionary Government were abolished.<sup>7</sup> In effect, those members of the bar practicing before 1949 were banned from practice.<sup>8</sup> Although references were made in much of the legislation of the early 1950's to public defenders representing accused persons, in practice no such defenders ever appeared before 1954.<sup>9</sup> Lawyers were reintroduced in 1954 or 1955, and were called "people's lawyers"<sup>10</sup> to be distinguished from their discarded predecessors—bourgeois lawyers.<sup>11</sup> In 1956, there were reportedly 2100 lawyers practicing in China.<sup>12</sup> Many of those were purged, however, during the Anti-Rightist Campaign of 1957-1958.<sup>13</sup> In 1959, the Ministry of Justice and the organized bar of people's lawyers disappeared.<sup>14</sup> With the onset of the great Proletariat Cultural Revolution in 1966, which officially speaking lasted until 1976,<sup>15</sup> there was a "period of lawlessness" over the entire country and it is safe to assume that no legal profession

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4. Li, *supra* note 2, at 20.

5. *Id.* at 20-21.

6. S. LENG, JUSTICE IN COMMUNIST CHINA: A SURVEY OF THE JUDICIAL SYSTEM OF THE CHINESE PEOPLE'S REPUBLIC 128 (1967).

7. *Id.* at 129.

8. There were, however, many "underground lawyers" who were purged and eliminated in 1953. *Id.* at 132-34.

9. *Id.* at 131.

10. *Id.* at 135. In a speech before the National People's Congress on July 29, 1955, it was stated: "We are enforcing the system of people's lawyers on trial in Peking, Shanghai, Wuhan and other major, middle cities and will gradually introduce the system, as soon as we have acquired the necessary experience." *Id.*

11. *Id.* at 129. These bourgeois lawyers only served the interests of the privileged few. *Id.*

12. *Id.* at 136 n.35.

13. *Id.* at 137; Cohen, *infra* note 16, at 1533.

14. Chan, *The Role of Lawyers in the Chinese Legal System*, 13 HONG KONG LAW JOURNAL 157, 158 (1983).

15. See Alford, *supra* note 2, at 1181 n.2; S. LENG, CRIMINAL JUSTICE IN POST-MAO CHINA 17-18 (1985).

existed at all during those years of turmoil. Lawyers began to reappear by the spring of 1979.<sup>16</sup>

### I. 1980 LAWYERS' LAW

On August 26, 1980, the Provisional Regulations on Lawyers were passed by the Standing Committee of the Fifth National People's Congress.<sup>17</sup> The Provisional Regulations, which contain twenty-one articles, went into effect in January 1, 1982.<sup>18</sup> The Regulations make it clear that lawyers in the PRC are considered to be state workers<sup>19</sup> and, as such, are expected to cherish and support the socialist system.<sup>20</sup> One may question, then, to what extent the Chinese lawyer can function in the same independent manner as his Western counterpart. It seems that the answer would be for many reasons, not at all. First, lawyers' organizations are under the leadership of the Chinese Communist Party and are guided and supervised by the state executives and organs of justice.<sup>21</sup> Second, a lawyer may not be retained privately by a client and cannot individually accept remuneration for his services.<sup>22</sup>

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16. Cohen, *China's New Lawyers' Law* 66 A.B.A.J. 1533 (1980).

17. Provisional Regulations on Lawyers of the PRC, Renmin Ribao [People's Daily], Aug. 26, 1980, reprinted in 1 COMMERCIAL LAWS AND BUSINESS REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA 1949-1983, at 457-59 (V.F.S. Sit ed. 1983) (adopted at the 15th Session of the Standing Committee of the Fifth National People's Congress on Aug. 26, 1980) [hereinafter cited as Provisional Regulations]. See also Hsia & Hambley, *Provisional Regulations on Lawyers*, 1 CHINA LAW REPORTER 217 (1981); Hsia & Hambley, *The Lawyer's Law: An Introduction*, 1 CHINA LAW REPORTER 213 (1981); Zhiye, *How Do China's Lawyers Work*, Beijing Review, June 6, 1983, at 19.

18. Provisional Regulations, *supra* note 17, art. 21.

19. *Id.* art. 1. Article 1 states:

Lawyers are the state's legal workers and function to give legal assistance to the state organs, enterprises, establishments, mass organizations, the people's communes and the citizens in order to ensure the correct implementation of law and protect the interests of the state and the collectives as well as the legitimate rights and interests of the citizens.

*Id.*

20. *Id.* art. 8. Article 8 states in relevant part: "Those citizens who cherish the PRC, support the socialist system and have the right to vote and stand for election are eligible to be lawyers . . . ." *Id.*

21. JIE & JIN, *supra* note 3, at 28.

22. See *id.* with article 17 of the Provisional Regulations, which states:

When lawyers are requested to handle cases, instructions shall be accepted and service fees shall be collected by the legal advisory office on a unified basis.

In assigning cases to lawyers, the legal advisory office shall assign lawyers named by clients as far as possible to meet their requests and according to actual conditions.

Provisional Regulations, *supra* note 17, art. 17.

Third, lawyers must join lawyers' leagues or associations.<sup>23</sup> Fourth, lawyers must practice in legal advisory offices, which are supervised by the state's judicial administrative organs.<sup>24</sup>

In what kinds of activities may a Chinese lawyer be engaged? The professional activities of lawyers can be classified according to the following five headings:<sup>25</sup>

### 1. Group Advisor

A lawyer can act as a legal advisor for the state's agencies, units of enterprises and institutions, social groups and the people's communes.<sup>26</sup> When acting in the capacity of a group advisor the lawyer can give advice on the country's laws and regulations,<sup>27</sup> draft and examine legal documents,<sup>28</sup> and act as an agent in litigation,<sup>29</sup> mediation or arbi-

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23. See JIE & JIN, *supra* note 3, at 28. Also note that article 19 of the Provisional Regulations provides for the establishment of a lawyers' association, although membership does not appear to be mandatory:

A lawyers' association shall be established to protect the legitimate rights and interests of lawyers, to exchange work experience, to promote lawyers' work and to promote contacts between legal workers both at home and abroad.

The lawyers' association is a social organization and its organizational statute shall be worked out by the lawyers' [sic] association.

Provisional Regulations, *supra* note 17, art. 19.

24. See *id.* arts. 13-17.

25. See generally *id.* art. 2. Article 2 of the Provisional Regulations provides:

The major services of the lawyers are:

- a. To accept the instructions of the state organs, enterprises, establishments, mass organizations and the people's communes to act as their legal advisers;
- b. To accept a litigant's instructions to act as a representative in a civil case;
- c. To accept a defendant's instructions or the assignment of a people's court to act as an advocate in a criminal case; accept the instructions of a party who initiates a private prosecution and the instructions of a victim of a public prosecution or their close relatives to act as a representative in a lawsuit;
- d. To accept instructions to act in non-contentious matters and to render legal assistance or to act as a representative in mediation and arbitration;
- e. Explain questions on law and draft documents in a lawsuit and other related matters. Lawyers must propagate the socialist legal system in all their work.

*Id.*

26. *Id.* art. 2 a.

27. *Id.* arts. 2 c, 4.

28. *Id.* arts. 2 e, 4.

29. *Id.* arts. 2 b, 4.

tration activities.<sup>30</sup> A lawyer invited by a unit to act as its legal advisor is obliged to safeguard his client's legal rights and interests.<sup>31</sup> A lawyer can be retained on an ad hoc basis or as a regular annual advisor.<sup>32</sup> The bulk of these unit-invited lawyers' practices concerns the regulation of economic activities among units, government agencies and social groupings.<sup>33</sup>

## 2. Agent in Proceedings

A lawyer acting as an agent may accept an individual litigant's instructions in civil and criminal proceedings.<sup>34</sup> It is important to note that the boundary between civil and criminal proceedings is not clearly defined under the law of the PRC.<sup>35</sup> Under article 114 of the Criminal Procedure Law,<sup>36</sup> for example, after the judicial officer examines the accused, with the leave of the presiding judicial officer, the victim, the plaintiff or the defendant of any annexed civil proceeding may question the accused.<sup>37</sup> A lawyer, therefore, can be retained to participate in a criminal trial by the victim, the plaintiff or the defendant of the annexed civil proceeding, although the lawyer's client is not a party thereto. Article 118 of the Criminal Procedure Law allows the victim of an alleged crime the right to address the court in a criminal proceeding<sup>38</sup> and he or his relatives may retain a lawyer as a representative.

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30. *Id.* arts. 2 d, 4.

31. *Id.* art. 4. Article 4 provides:

When acting as legal advisers, lawyers are responsible for giving advice, drafting and examining legal documents on legal questions that occur in the course of business of an organization that instructed them and act as representatives in law suits, mediation and arbitration in order to safeguard the legitimate rights and interests of the organization.

*Id.*

32. *Id.*

33. W. LEI, *WOQUODILUSHIZHIDU* (MY COUNTRY'S SYSTEM OF LAWYERS) 29 (1981).

34. Provisional Regulations, *supra* note 17, arts. 2 b-c.

35. Yuanping, *Talks on the Supplementary Civil Action in the Criminal Procedure*, 2 FAXUE YANJIU [STUDIES IN LAW] 75 (1984).

36. The Criminal Procedure Law of the PRC, art. 114, reprinted in *THE CRIMINAL LAW AND CRIMINAL PROCEDURE LAW OF THE PEOPLE'S REPUBLIC OF CHINA*, 115-68 (1984) (adopted at the Second Session of the Fifth National People's Congress on July 1, 1979 and effective as of Jan. 1, 1980).

37. *Id.* Article 114 states in relevant part: "After the adjudication personnel have questioned the defendant, the victim, the plaintiff in a supplementary civil action and the defender may put questions to the defendant with the permission of the chief judge."*Id.*

38. *Id.* art. 118. Article 118 states in relevant part: "After the inquiry by the tribunal, the public prosecutor shall speak, the victim shall speak, and then the defendant shall make his statement and defense, the defender shall conduct the defense, and there may

Article 148 of the Criminal Procedure Law permits a party, a victim and his family or a citizen to appeal a decision to a people's court or a people's procuratory.<sup>39</sup> Any of these parties may engage a lawyer to lodge an appeal. Articles 50 and 53 of the Civil Procedure Law<sup>40</sup> also refer to the lawyer's representation of a litigant in a civil suit and the lawyer's general obligations to his client.<sup>41</sup>

### 3. Defense Counsel

A lawyer may act for an accused in a criminal proceeding.<sup>42</sup> A lawyer acting in such a capacity governed by Article 6 of the Provisional Regulations, which states that a defense counsel is "responsible for safeguarding the legitimate rights and interests of the accused on the basis of facts and law" and has a right to refuse to serve as the accused's counsel if in his judgment the accused is not being truthful.<sup>43</sup>

be debate . . . ."*Id.*

39. *Id.* art. 148. Article 148 provides: "Parties, victims and their family members or other citizens may present petitions regarding judgments or orders that have already become legally effective to the people's courts or the people's procuratories, but the execution of such judgments or orders cannot be suspended." *Id.*

40. Civil Procedure Law of the PRC, arts. 50, 53, Renmin Ribao, Mar. 14, 1982, reprinted in BRITISH BROADCASTING COMPANY, SUMMARY OF WORLD BROADCASTS, FAR EAST AFFAIRS 4-35 (1982) (adopted at the 22nd Session of the Standing Committee of the Fifth National People's Congress on Mar. 8, 1982):

#### Article 50

The parties to a lawsuit, legal representative or agent *ad litem* may appoint one or two persons to represent them in legal proceedings. An agent may entrust a close relative, lawyer, citizen recommended by a people's organization or the unit in which the persons who are engaged in a lawsuit work or anyone approved by the people's court to represent him in legal proceedings.

. . . .

#### Article 53

The lawyer who represents a client in taking legal action may read the reference materials concerning this particular case. However, he must keep secrets for the client and others if such reference materials involve state or personal secrets

. . . .

*Id.*

41. *Id.*

42. Provisional Regulations, *supra* note 17, art. 2 c; see also generally J. COHEN, THE CRIMINAL PROCESS IN THE PEOPLE'S REPUBLIC OF CHINA 1949-1963: AN INTRODUCTION (1968).

43. Provisional Regulations, *supra* note 17, art. 6.

#### 4. Mediator

A lawyer may be engaged to act in a non-litigious matter or serve as an agent in mediation or arbitration activities.<sup>44</sup> Mediation and arbitration, in this context, also include activities conducted vis-a-vis or for overseas enterprises.<sup>45</sup>

#### 5. General Counsel

A lawyer may serve individual citizens or groups by performing general legal activities, such as answering questions on the law or drafting documents.<sup>46</sup> In all their professional activities, lawyers are protected by the law of the state, and so long as they adhere to the law and uphold the tenets of the socialist system, individuals or government units are not permitted to interfere.<sup>47</sup> Moreover, the law also guarantees to the lawyer access to research materials, the opportunity to investigate his case and, in criminal matters, the right to confer with his client.<sup>48</sup> Those entities or individuals involved must cooperate with the lawyer as he carries out his duties.<sup>49</sup> And, like lawyers in the United States, lawyers in the PRC must uphold the sanctity of the attorney-client relationship by maintaining secrecy concerning any privileged information disclosed therein.<sup>50</sup>

## II. QUALIFICATIONS

Unlike lawyers in the United States, where practitioners in most states must be graduates of a law school accredited by the American Bar Association, Chinese lawyers come from heterogeneous educational backgrounds. Indeed, the PRC has always, and to the most extreme

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44. *Id.* art. 2 d.

45. *LEI, supra* note 33, at 33-36.

46. Provisional Regulations, *supra* note 17, art. 2 e.

47. *Id.* art. 3. Article 3 states in relevant part: "Lawyers must carry out their work according to the law and are protected by the law. No organization or person is permitted to interfere with lawyers' work."

48. *Id.* art. 7. Article 7 provides:

In performing their work in lawsuits, lawyers are entitled to obtain research materials relevant to the case according to regulations and to make inquiries about related organizations and persons. In acting as advocates in criminal cases, lawyers have the right to meet and correspond with the accused in custody.

Organizations and persons concerned must assist lawyers on the above.

Lawyers have the responsibility to maintain secrecy when they come into contact with state secrets and personal secrets in their work.

*Id.*

49. *Id.*

50. *Id.*



degree during the Cultural Revolution (1966-76), adopted a policy of opening admission to both the medical and legal professions to the general populace. The preferred quality has been a person's "redness;" a correct ideological and political position, rather than his expertise or superior professional knowledge.<sup>51</sup> Thus, in order to become a lawyer, one must meet certain political and ideological qualifications. Only citizens of the PRC, who have the right to elect and be elected, can qualify as lawyers.<sup>52</sup> As mentioned above, a lawyer must cherish his country and support the socialist system.<sup>53</sup>

The educational requirement may be met by any of four alternatives: 1) a graduate of a law department of an institution of higher learning who has been employed for two or more years in the judiciary, the teaching of law or legal research can become a practicing lawyer;<sup>54</sup> 2) a person who has received professional legal training or has worked as a judge of the people's courts or as a people's procurator can qualify;<sup>55</sup> 3) a graduate of an institution of higher education, who has completed three of more years of economic, scientific or technological work, is proficient in his field, has gone through professional legal training and is suitable to engage in lawyer's work can qualify;<sup>56</sup> 4) a person who has attained the equivalent legal knowledge indicated in 1) or 2) above is considered to be qualified to become a legal practitioner.<sup>57</sup>

It is also possible to become a part-time, adjunct lawyer.<sup>58</sup> A training period of two years is required for an apprentice lawyer to become

51. J. TOWNSEND, *POLITICAL PARTICIPATION IN COMMUNIST CHINA* (1969). Article 8 of the Provisional Regulations reflects the deep rooted ambivalent attitude toward professionalization in the PRC. See *supra* note 20.

52. Provisional Regulations, *supra* note 17, art. 8. No foreigners or non-PRC citizens can, therefore, qualify as lawyers in the PRC. See also Civil Procedure Law of the PRC, *supra* note 41, art. 191, which stipulates that foreign nationals and entities must retain lawyers licensed in the PRC. Foreign lawyers are, however, permitted to set up representative offices in places like Peking, Shanghai and Guangzhou. In addition, foreign lawyers have been permitted to take part in arbitration activities in the PRC.

53. Provisional Regulations, *supra* note 17, art. 8.

54. *Id.* art. 8 a.

55. *Id.* art. 8 b.

56. *Id.* art. 8 c.

57. *Id.* art. 8 d.

58. *Id.* art. 10. Article 10 provides:

Those who have acquired the qualifications of a lawyer but are unable to leave their job [sic] can act as part-time lawyers. Organizations concerned must support such part-time lawyers.

Personnel who are in active service in the people's courts, the people's procuratorates and the people's public security organs cannot be part-time lawyers.

*Id.*

fully qualified after graduation from a law department of an institution of higher learning or after having received professional legal training.<sup>59</sup>

The evaluation and certification of lawyers is not controlled by the legal profession itself, but rather by the judicial department.<sup>60</sup> Registration of lawyers is handled by the executive branch of the Chinese Government, the Ministry of Justice.<sup>61</sup> Likewise, incompetent lawyers have their certificates invalidated by the judicial departments.<sup>62</sup> The Provisional Regulations are silent on the power to discipline lawyers on grounds other than incompetence. It is unlikely, however, that the legal profession will be allowed to become self-regulatory. The power to discipline lawyers committing misconduct or misfeasance should be exercised by the judicial departments in the spirit of article 12 of the Provisional Regulations. The lack of independence of the legal profession has been commented on by non-Chinese observers.<sup>63</sup> We must not equate the legal profession in the PRC with that of its bourgeois counterparts, however, for lawyers in the PRC are, by definition, state workers and in practice owe their duty first to the state.<sup>64</sup>

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59. *Id.* art. 11. Article 11 states:

Those who have graduated from university or college law departments or who have gone through professional legal training can act as trainee-lawyers after obtaining approval from the judicial departments (bureaus) of provinces, autonomous regions or municipalities directly under the central government by passing an examination.

The training period for trainee-lawyers is 2 years. Upon completion of the training period, trainee-lawyers are qualified as lawyers in accordance with the procedure stipulated in Article 9 of the provisional regulations; the training period can be extended if the trainee-lawyers fail to pass the examination.

*Id.*

60. *Id.* art. 9. Article 9 states:

After obtaining the necessary qualifications for lawyers, approval and a certificate must be obtained from the judicial departments (bureaus) of provinces, autonomous regions or municipalities directly under the central government; such certification must also be entered in the record of the PRC Ministry of Justice. Upon discovery of improper examination or approval, the [M]inistry of Justice must instruct the judicial departments (bureau[s]) to conduct an inquiry into the matter therewith.

*Id.*

61. *Id.*

62. *Id.* art. 12. Article 12 states: "Lawyers who are highly incompetent may be deprived of their qualifications by decision of the judicial departments (bureaus) of provinces, autonomous regions and municipalities directly under the central government and with the approval of the Ministry of Justice." *Id.*

63. See Chan, *supra* note 14; Cohen, *supra* note 16, at 1534-35.

64. Provisional Regulations, *supra* note 17, art. 1. For the text of article 1, see *supra* note 19.

### III. LAWYER'S OFFICES

Another instance of China's legal profession being controlled by the state is that of the legal advisory office, where lawyers work under the organizational leadership and supervision of the State judicial administrative organs.<sup>65</sup> Each legal advisory office, however, is independent of the other offices.<sup>66</sup> Each has a director and as many deputies as are required.<sup>67</sup> The director and his deputies are elected by the lawyers of that legal advisory office; nevertheless, the election must still be endorsed by the judicial department.<sup>68</sup> Hence, control over lawyers is ultimately reserved to the government. A director and his deputies are elected for a term of three years and they can stand for reelection after their respective terms of office expire.<sup>69</sup>

Although in practice a client will be given an attorney of his or her choice whenever possible,<sup>70</sup> theoretically the assignment of a lawyer to a particular case is not determined by the client's wish but by the director and his deputies at the legal advisory office.<sup>71</sup> Legal fees are charged according to a uniform scale,<sup>72</sup> and the fee collected from a client goes to the legal advisory office, not to the individual attorney.<sup>73</sup> The income of each legal advisory office is transferred to the national treasury and the operational expenses of the legal advisory office are paid from the national revenue.<sup>74</sup>

There are bar associations in China known as lawyers' associations.<sup>75</sup> Unlike their counterparts in the West, however, lawyers' associations in the PRC carry no disciplinary power over their members, and they are, therefore, not likely to wield the kind of influence over the government or assume an independent role as does, for example, the American Bar Association in the United States.<sup>76</sup>

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65. Provisional Regulations, *supra* note 17, art. 13.

66. *Id.* art. 14.

67. *Id.* art. 16.

68. *Id.*

69. *Id.*

70. *Id.* art. 17.

71. *Id.*

72. On July 20, 1956, the Ministry of Justice circulated the "Lawyers' Fees Temporary Procedure." On December 9, 1981, the National Treasury in conjunction with the Ministry of Justice issued another "Lawyers' Fees Temporary Procedure" for internal (*neibu*) use.

73. Provisional Regulations, *supra* note 17, art. 17.

74. Chan, *supra* note 14; Cohen, *supra* note 16, at 1535. See also *infra* note 77 on the "responsibility system."

75. Provisional Regulations, *supra* note 17, art. 19. For the text of article 19, see *supra* note 23.

76. See Cohen, *supra* note 16, at 1535.

## IV. RECENT DEVELOPMENTS AND CONCLUSION

It was reported in Jiangsu that a legal advisory office entered into a contract with the local judicial bureau, whereby the lawyers practicing in the office were able to assume "responsibility" for a year.<sup>77</sup> What this means is that the five lawyers working at the legal advisory office will undertake to earn at least 9000 *yuan*<sup>78</sup> a year. At the end of the year, if they earn more than 9000 *yuan*, thirty percent of the excess will be distributed as a bonus, according to individual performance. If they fail to achieve the target 9000 *yuan*, their annual reward over expenses will be reduced.

Another development is that Chinese legal advisory offices, especially those in the coastal Special Economic Zones (SEZs),<sup>79</sup> are beginning to welcome and accept the idea of being retained by foreign-owned enterprises.<sup>80</sup> In the past, there was an inhibition in working for foreigners because of the stigma against association with interests antagonistic to China. Now, however, such attitudes are changing among lawyers.

Lawyers have reportedly taken an active role in activities concerning foreign trade and investment in China's cities, like Peking, and the SEZs. A national law firm called the China Global Law Office was formed in Peking in January 1985 and operates exclusively to advise foreigners.<sup>81</sup> It is envisioned that this trend of opening specialist offices will continue, but lawyers who practice in these offices are hindered by their inability to leave the country freely to hold conferences or attend meetings abroad on short notice, as their Western counterparts customarily do.<sup>82</sup>

At the time of this writing, there are about 20,000 legal practitioners in the PRC,<sup>83</sup> of whom 12,000 are in full-time and 9800 in part-time

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77. Zhongguo Fazhi Bao [China Legal News], June 18, 1984.

78. As of April 22, 1986, U.S. \$100 = 331.35 *yuan* (for transactions of \$1 million or more). Wall St. J., Apr. 22, 1986, at 44, col. 3.

79. See Moser, *Law and Investment in Guangdong Special Economic Zones*, in FOREIGN TRADE, INVESTMENT AND THE LAW IN THE PEOPLE'S REPUBLIC OF CHINA 143 (M. Moser ed. 1984); Chen, *To Open Wider, or to Close Again: China's Foreign Investment Policies and Laws*, 6 N.Y.L. SCH. J. INT'L & COMP. L. 1 (1984).

80. Zhongguo Fazhi Bao, *supra* note 77; Ming Bao [Enlightenment Daily], Aug. 29, 1984, at 5; Renmin Ribao, July 7, 1984, at 4.

81. See China Daily, July 25, 1984, at 1; Renmin Ribao, *supra* note 80; China Daily, June 20, 1984, at 4; Junwei, *Birth of a New Law Firm*, Intertrade, Feb. 1985, at 22; Zhongguo Fazhi Bao, Nov. 19, 1984, at 1.

82. Renmin Ribao, Mar. 4, 1985, at 4.

83. Letter from Luo Jin, Director, Foreign Affairs Bureau, Ministry of Justice, PRC (Mar. 27 1986) (regarding current data on lawyers in the PRC).

practice.<sup>84</sup> They are employed in 3000 offices.<sup>85</sup> No doubt, these numbers will grow as the demand for their legal services increases.<sup>86</sup>

To be effective, the Chinese legal profession must overcome many institutional and operational difficulties. For example, it is not uncommon for a party to a dispute, instead of seeking the assistance of a lawyer, to bring the dispute to the attention of a higher-ranking bureaucrat because a lawyer and a bureaucrat are both state workers and the view of the one who is senior in the bureaucratic hierarchy would be determinative.<sup>87</sup> On the other hand, some lawyers are criticized for being too enthusiastic in defending a client's legitimate interests.<sup>88</sup> Indeed, as observed by an American law student, if an articulate and well-educated legal profession is permitted and perceived to take control of the law, many undereducated bureaucrats would become jealous of this new breed of power elite.<sup>89</sup>

Traditional prejudices against lawyers as spokesmen and defenders of criminal or unpopular types are still too entrenched and widespread to be eradicated.<sup>90</sup> Some distrust lawyers because they perceive them to be the "mouthpieces of judges" and inadequately prepared to defend their clients' interests.<sup>91</sup> It has been reported that a lawyer was barred from taking part in a criminal proceeding and asked to leave the court by a judge because he appeared to defend his client too vigorously and was too argumentative.<sup>92</sup> It has also been reported that a lawyer was assaulted by a mob because he represented an unpopular litigant in a civil suit.<sup>93</sup>

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84. *Id.*

85. *Id.*

86. It is projected that, by the year 1990, there will be 60,000 lawyers in the PRC. Ming Bao, Sept. 4, 1984, at 5.

87. Renmin Ribao, Mar. 4, 1985, at 4.

88. *Id.*

89. Baranski, *The Dilemma of Legislation*, Far Eastern Econ. Rev., Jan. 10, 1985, at 39. This jealousy might be explained by the lower level of education of these bureaucrats as compared to education level of today's lawyers in the PRC. Si, *Recent Look at the Chinese Legal System*, Wide Angle, Jan. 16, 1985, at 58; *China's Developing Legal Structure for Trade and Commerce: Hearings Before the Special Subcomm. on U.S. Trade With China of the House Comm. on Energy and Commerce*, 98th Cong., 2d Sess. 383, 387-88 (1984) (prepared statement of Prof. William C. Jones, Washington Univ. Law School).

90. Liaowang, *Lawyers' Role in Legal System*, Foreign Broadcast Information Service Daily Rep., Dec. 20, 1984, at K17.

91. South China Morning Post, Dec. 9, 1984, at 14.

92. L. Yu & S. Yu, *The Protest of Lawyers in Court*, Renmin Ribao, Jan. 4, 1985, at 4; Xue, *Rustication of a Lawyer and Mass Justice*, Hong Kong Econ. J., Jan. 15, 1985, at 3.

93. Ming Bao, Jan. 4, 1985, at 5.

Judging from these reported incidents, it appears that the legal profession in China has to balance a number of conflicting demands in order to carry out the duties which have been taken for granted by their Western counterparts. It remains to be seen how these conflicts can be resolved in the foreseeable future.

